

**Transportation External Coordination Working Group
Transportation Grant Topic Group
Tuesday February 6 and Wednesday February 7, 2001
Portland, OR**

Participants

John Allen, NTSB (Tuesday); Jim Baranski, State of New York/CSG-ERC; Helen Belencan, DOE-EM 22 (Tuesday); Wynona Boyer, Shoshone Bannock (Tuesday); Barbara Byron, State of California/WGA; Martha Crosland, DOE/EM-11 ; Jim Daust, CVSA; Don Greene, State of Arkansas/SSEB; Veronica Herkshan, Shoshone-Bannock; Robert Holden, NCAI; Judith Holm, DOE-NTP/AL; Corinne Macaluso, DOE-OCRWM; Tracy Mustin, DOE-NTP/HQ; Ellen Ott, DOE-GC; Tammy Ottmer, State of Colorado/WGA; Max Power, State of Washington/STGWG; Ron Ross, WGA (Tuesday); Tim Runyon, State of Illinois/CSG-MW; Thor Strong, State of Michigan/CSG-MW; Elgan Usrey, State of Tennessee/SSEB; Chris Wells, SSEB; Heather Westra, Prairie Island Indian Community; Ed Wilds, State of Connecticut/CSG-ERC. Phillip Paul, CSG-ERC and Lisa Sattler, CSG-MW, joined the group on the second morning.

Research/Support Staff: Judith Bradbury, PNNL; Glenda Oakley, SAIC.

Overview

The meeting took place over two half days. During the first afternoon, participants discussed the Draft Framework, which had been distributed together with Appendix B (issues matrix) prior to the meeting. These documents are included on the TEC web page. During the second morning, the discussion focused on next steps, including plans for a workshop to be held in conjunction with the next TEC meeting.

First Session, Tuesday February 6

Following participant introductions, Judith Holm introduced Helen Belencan, DOE-HQ who has been coordinating HQ activities related to the grant. Helen and Judith facilitated the discussion.

Judith provided a background for activities, which had been conducted prior to development of the Draft Framework and a brief outline of the Framework. Helen emphasized that the current discussion with topic group members was just a beginning and was intended to give a sense of DOE's preferences for actions to resolve the issues that had been raised. She encouraged participants to closely review Appendix B also. The Appendix rolls up individual issues raised in prior discussions with States and Tribes into the six key issues discussed in the Framework. Helen briefly discussed the intent of the introductory section—i.e., to provide a sense of why DOE is proceeding with the grant and a history of the discussions. She proposed that the group overview the document, beginning with the process section (Section 3), and then discuss each of the key issues in

turn.

Comments and Issues Concerning the Framework Document

Comments and issues raised by Topic Group participants are categorized below under a general/process heading or according to the six key issues listed in the Framework.

Introductory and Process Issues:

- The difference between a cooperative agreement and a grant should be clarified. It was suggested that the difference was the degree of involvement of the federal agency and the ability to extend a cooperative agreement for any number of years. DOE agreed to provide a definition of the distinction (see Appendix B).
- A more detailed description/explanation of the various steps in the formal process should be included in the next draft.
- Further clarification should be provided that DOE will consult with Tribes and States before a secretarial decision is made to proceed with the grant and initiate the formal Federal Register process.
- The fact that DOE, not TEC, will make the consolidated grant recommendation to the Secretary about the grant will be included in the next draft.
- It was explained that the proposed grant program would be set up as a three-year pilot with participation by DP and EM programs. After this time period, and when OCRWM knows it is going to ship, OCRWM will decide how its shipments will fit into the program. Meanwhile, OCRWM has concurred on the Framework document and will be participating in the discussion process.
- One participant pointed out that it would be better at this early planning stage to address and incorporate the legislative requirements of 180(c) so that the grant would not need to be revised—which would be time consuming and difficult, once a process is in place. OCRWM was strongly encouraged to build their funding structure into the grant where possible so that there will be a smooth transition when they re-evaluate their future participation.
- The observation was made that the document should discuss all transportation modes. DOE agreed to review the document to ensure that appropriate language is added to clarify that all modes are included in the calculations and the grant intention.
- Table 1, which shows funding received as compared with number of shipments, needs to be clarified and have data added in several areas. Needed additions include funding by region and State, inclusion of three years of data, and presentation by types of material (spent fuel, tru, low-level waste and other). The discussion on the second day expanded on this idea.
- Funding for CVSA was raised as an issue. The grant allowable activities do include CVSA. Whether DOE would continue funding for the training CVSA currently provides was also discussed. This question was set aside for the time being because it is a programmatic activity that could be addressed separately from the grant.
- Two specific comments were made concerning the first paragraph in Section 2. One participant said that there had been general agreement to explore the grant concept but

not on the concept per se. Another participant stated that she disagreed with the addition of “with limited resources” to the statement of agreement on the basic goal.

Funding Approach

- A Tribal participant pointed out that the term “special needs” has a legal connotation and should be replaced with the term “discretionary,” as used in earlier discussions.
- A suggestion was made that past shipments should be assigned less weight than future shipments due to the prospective nature of the grant (it was pointed out that past shipment information is more solid than planning information).
- The time factor should be taken into account. One participant noted that if shipments are made by rail rather than road, the longer shipment time will affect personnel costs, and that rail shipments might therefore need to be weighted more heavily than highway shipments. Another emphasized that it was also a question of the number of inspections and that time could not simply be addressed as a weighting issue. Yet another participant, however, countered these arguments by pointing out that the logic is backward, since this would lead to an argument that the slower the train, the more funding would be needed.
- A Tribal participant queried the use of enrolled Tribal members as the basis for estimating Tribal population, if population were used as a factor in assessing impact, and emphasized that, in addition to enrolled members (some of whom would not reside on the reservation), a reservation would include members from other Tribes and also non-Tribal residents. The representative also stated that Census data are unreliable since they typically undercount Tribal members and expressed concern that States would include Tribal populations within their population count.
- A participant recommended using annual rather than decennial census data because of the large changes that could occur over a ten-year period between one census and the next. [Note of clarification: State population from the U.S. Census that are used in TRAGIS and incorporated into FINCALC are updated every five years. Tribal population data are obtained from Bureau of Indian Affairs (BIA) periodic updates.]
- Should types of shipment be weighted equally? What is the trade-off between a low level waste shipment that may be more likely to experience a release and a high-level waste shipment?
- What should be the relative proportion of the grant components? A participant noted that WGA had recommended a 25/75 impact/base split, with a minimum base amount of \$150K. (Another participant disagreed with these proportions.) These kinds of issues would be discussed in the proposed workshops, which would analyze the data in several ways to determine whether weighting factors really make a difference.
- Several participants expressed disagreement with using population $\frac{1}{2}$ mile each side of a transportation route and one recommended using a wider band, as in EPZs. Others expressed concern that tourist and working populations were not considered. As noted in Appendix B, these comments have been expressed on previous occasions.
- DOE was requested to provide more information on the data sources used in FINCALC.
- The planned workshops outlined in the process section of the Draft Framework should

provide opportunities to test the sensitivity of the data elements, the weighting and population numbers. It was also suggested and supported that the overall goal of keeping the impact formula simple could lead to more general acceptance of the data and get a sufficiently fair distribution for most recipients to be comfortable.

Eligibility

- One participant recommended that a different eligibility level be established for the base and impact components as a way to accommodate the OCRWM requirements and thus be able to have OCRWM participate in the consolidated grant program.
- One participant commented that there was a time element involved in determining eligibility and that a State with many shipments may have different needs than a State with only a limited number of shipments and therefore needs time to ramp up. WIEB has estimated that a three-year planning time is needed.
- Some participants queried the rationale for setting an eligibility level of 10 shipments and expressed concern that this is too low. Particular issues are a) this would not be consistent with OCRWM's position that NWPA requires training and assistance be provided for every jurisdiction and b) Tribal concerns that this would violate the federal government's trust relationship with individual Tribes.
- What alternative approaches could be used to meet the needs of jurisdictions that do not meet a minimum threshold of 10 shipments? Some suggested options included provision of escorts, and/or public involvement and technical assistance.
- Other participants suggested setting different eligibility levels according to shipment type, e.g., low-level waste shipments could have a higher threshold while one HLW shipment would establish eligibility.

Mechanism for Distributing Funds to Participants

- Some participants emphasized the value of the regional groups. They expressed concern that the description of the role of the groups that is provided in the Framework is inaccurate and that the groups do much more than coordination and planning. For example, the group can assist States where rules and processes make it too cumbersome to apply for funding or pay for travel expenses. DOE requested that State representatives provide replacement wording that would more accurately represent the role that such groups play.
- A participant also commented that administrative overhead expenses should not be included as a "con." She asserted that, to the contrary, using the regional organization resulted in huge financial benefit to DOE: there is a big dollar savings when negotiation takes place by an entity among the various States because the group process creates a cap that prevents inflated requests and costs.
- Another person commented that, based on experience with FEMA Chemical Weapons emergency management funding and the recent example of the SSEB being cut out of its role in WIPP funding, his State preferred direct funding to the Governor's designee. This approach cuts out bureaucratic red tape. In addition, he had found that applying for grants entailed a simpler process than applying for a cooperative agreement and he disagreed that there would be insufficient funding to make it worth applying for a grant.

- OCRWM noted that, under NHPA, 180(c) funding would be provided directly to States and Tribes and not to regional organizations.

Addressing Tribal Needs and Preferences

Tribal members reiterated concerns about the Framework that they had expressed previously in greater detail in the Tribal Topic Group. They emphasized the very different needs and concerns of Tribes and the need to address these in a separate document as well as through individual Tribal consultations.

- The Framework does not address the implications of the trust relationship between Tribes and the Federal government. Tribes have individual needs and concerns, which must be addressed on a one-on-one basis: the federal government has an obligation to address Tribal needs under treaty rights. DOE agreed that the next draft will address these legal issues and other policy, which addresses the government-to-government relationship.
- One representative expressed concern that a consolidated approach could entail homogenizing Tribal needs rather than addressing individual needs.
- The Framework also provides insufficient background for understanding the context of Tribal needs and concerns. For example, as NTP's financial assistance reports show, there is a huge discrepancy between funding and capabilities of Tribes, as compared with States. One representative stated that DOE should divide funds equally between States and Tribes.
- It was stated that the proposed approach places Tribes at a disadvantage. Population estimates based on enrolled Tribal membership are inaccurate, and establishing an eligibility threshold of 10 shipments is discriminatory.
- An additional consideration is that although a Tribe's land base may be small, a Tribe's perspective on that land is very different: members are unwilling to move away because of unique cultural and historical links and the impact of damage to tribal lands would be of much greater significance than for non-Tribal populations.
- One representative emphasized that each Tribe has a different process to be followed, according to their individual treaty with the federal government. The language of the new Executive Order is very specific and if it means waiting for the Tribes while everyone else goes ahead with the proposed grant, so be it. DOE suggested that it was important to press forward together on the grant because justifying budget for States and Tribes would present a stronger argument than if the process occurred at different times.
- Others expressed concern that relationships with particular DOE offices and programs established through negotiation and over time would be jeopardized.

Allowable Activities

- A WGA representative commented that the first three components of allowable activities were intertwined in Table 3 of the Framework and further noted that the table represents a digested version of what WGA had provided to DOE in its June memo (and did not make as much sense as the original version). She provided copies of the WGA memo and suggested that members use the memo to review and improve the table.
- A participant queried whether TRANSCOM had been removed from Table 3 as an allowable activity and was assured that the specific reference had been removed at the request of participants in an earlier discussion. Activities such as TRANSCOM would be allowable.

Application Criteria

- A participant commented that States needed guidance on what DOE will be providing and what is expected from the States—what standard will be used to evaluate applications? Another participant countered that it is up to the States to create their own self-directed guidance and not be the recipient of what DOE wants the States to do. DOE suggested that the application criteria had not been addressed because other issues needed to be resolved first; however, based on the discussion, DOE agreed that application criteria should be considered in the upcoming workshops.
- Several members asked how accountability would be established.

Concluding Discussion, First Session

At the end of the first afternoon, participants agreed that they would reconvene the following morning to discuss next steps, and in particular to follow up on the suggestion to plan workshops to examine in greater detail some of the issues related to the funding approach.

Second Session, Wednesday February 7

Judith Holm, who facilitated the discussion with the help of Tracy Mustin and other DOE members, opened the process with a review of required “quick fixes” to the document that had been raised the previous day and sought agreement on next steps in the process of discussing the proposed grant.

Document Revisions

Members reviewed and agreed that, if possible, the following changes should be made to the Framework document in the near future, i.e., before the WGA meeting, scheduled for early April:

- Restructure the document to include four sections:
 - Introduction
 - State issues and process
 - Tribal issues and process
 - Summary of Stakeholder Consultation and Schedules Conclusion
- Clarify/define terms:
 - Clarify that all transportation modes are considered (i.e., rail and barge as well as truck)
 - Explain OCRWM-specific requirements
 - Specify that it is a DOE responsibility to recommend to Secretary whether or not to proceed with the grant at the conclusion of the informal discussion process

- **Revise Table 1**

Participants agreed that the table is unclear and confusing, although it does show the disparity between number of shipments and funding received by a State. Work is needed in several areas:

- Include three years of historic shipment data, if possible (FY 2000 data are not yet available)
 - If possible, break down shipment numbers by type: low-level waste, spent nuclear fuel, transuranics and other (this may not be possible because of the difficulty in obtaining accurate data in the near term)
 - Explain assumptions (e.g., what the money numbers represent)
 - Break down funding by regional groups
 - Draw up a similar table for Tribes
- Clarify/explain the formal process and provide timing for the various steps.

Schedule for Revision of the Framework

- A TEC member proposed, and it was agreed by all, that the TEC members would provide comments on the Framework to Judith Bradbury within 30 days (March 7). Programmatic or policy questions should be directed to Judith Holm or Helen Belencan
- DOE will provide a revised Framework by late March (in time for State regional group meetings) that incorporates:
 - Near-term changes agreed on during the current TEC meeting
 - Written comments which are relatively easy to incorporate (i.e., do not require a extensive data analysis or collection).

Next Steps

Members discussed various approaches and agreed on the following activities to help move forward on the grant discussion:

- Topic Group conference calls will be held periodically.

- State regional group meetings (April-June) will include time set aside for discussion of grant issues. DOE will prepare data runs and analyses for discussion at the meetings and will compile a record of comments.
- An inter-regional workshop for States will be scheduled to coincide with the next TEC meeting to further discuss results from the individual State regional meetings.
- DOE plans a similar consultation process with Tribes as with the State groups and will consult with TEC Tribal representatives concerning next steps in Tribal discussions and meetings. Proposed Workshop Agenda Agenda topics/issues include:
 - Eligibility, including what assistance could be provided for States/Tribes which do not qualify for the grant.
 - What do different allocation factors/ components mean? What happens when these are changed and what are the trade-offs?
 - What is to be included in the discretionary component? Currently, a number of concerns are being covered under this component and States want to be assured their needs are not going to be thrown into a subjectively defined component. How to treat the regional groups - funded as part of the discretionary component or through programmatic mechanisms outside the grant.
- Allocation factors and data analysis: A primary focus of the workshop would be to examine what data are needed and to examine the results of changing the weightings of components and impact factors such as shipments, population, and miles, *with the caveat that the discussion is hypothetical*. Data sources and assumptions will also be examined. DOE agreed to provide some hypothetical runs with dollar amounts so that States and Tribes could review the specific factors. That information would also be demonstrated at the workshop, with the opportunity to adjust various parameters and examine the changes that occurred.
- Requirements/performance standards: a focus would be to identify how to reach particular outcomes and how DOE would evaluate the overall application.
- State- and Tribal-specific issues: DOE needs input from States and Tribes on administrative issues and procedures that will affect their ability to receive and distribute funding.

Other Issues and Comments

- Participants queried the timeline for the budgetary process. DOE explained that, to meet the 2003 timeline for distributing funding, a notice of program would be developed this spring, with no dollar amount specified and with funding details provided in next fall's budget call. Funding would be subject to agreement among State and Tribal participants and DOE on the Framework, as well as on Congressional approval.
- A key concern is when agreement will be reached on a bottom-line funding amount. Many States will not commit until they find out whether they will get more, less, or the same funding as now.
- One participant suggested that perhaps another approach is needed: States should say what is needed. However, defining need is difficult and basically comes down to what a State would like to have to be able to respond—basically what is on your wish list, then spend where you get most bang for buck.

- One participant commented that there are two costs involved in a shipping program 1) a ramp-up cost and 2) maintenance cost. He pointed out that a lot of WIPP costs were ramp-up costs and the WIPP States have become accustomed to funding at this higher level. This viewpoint was disputed by a State who reported that WIPP States had found that they incur a huge maintenance cost for inspections. Another participant however, pointed out that the number of inspections could vary, depending on a State's priorities and that, under the base grant, it would be up to each State to determine its individual needs and priorities—the real issue is the total amount to be divided.
- Several participants noted that, unlike 180(c), there is no legislative mandate for the proposed consolidated grant. They believe that a consolidated grant would increase their chances of getting funded for items that are currently not given funding, which would result in more consistent funding levels. However, unless agreement is reached, a consolidated transportation grant cannot be implemented.